2014 IL App (5th) 140349-U

NO. 5-14-0349

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re G.S., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Jackson County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-JA-23
	)	
Jessica W. and Albert S.,	)	Honorable
	)	Christy W. Solverson,
Respondents-Appellants).	)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Welch and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly terminated parental rights in juvenile proceeding, wherein counsel was not ineffective.

¶ 2 The respondents, Jessica W. and Albert S., appeal the order entered by the circuit court of Jackson County terminating their parental rights to their minor child, G.S. On appeal, Jessica and Albert argue that they received ineffective assistance of counsel and that the circuit court erred in finding that it was in G.S.'s best interest to terminate their parental rights. Albert also argues that the circuit court erred in finding him unfit. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 In 1997, Jessica was convicted of the first-degree murder of her infant son (720 ILCS 5/9-1(a)(2) (West 1996)). After serving her sentence with the Department of Corrections, she was released from custody. Thereafter, on November 22, 2011, G.S. was born and, on the same date, taken into protective custody by the Department of Children and Family Services (DCFS). On November 23, 2011, the State filed a petition for adjudication of wardship (see 705 ILCS 405/2-13 (West 2010)), alleging that G.S. was neglected in that he was without proper care because of Jessica's unregulated physical inadequacies and untreated mental and psychiatric disabilities and because Jessica had been convicted of first-degree murder of her infant child (see 705 ILCS 405/2-3(1)(b) (West 2010)).

¶ 5 On November 28, 2011, the circuit court appointed attorney John McDermott to represent Jessica and Albert. At the shelter care hearing, Albert and Jessica stipulated to the State's allegations of neglect, *i.e.*, that Jessica had intentionally turned her insulin pump off while she was pregnant with G.S., causing her to be hospitalized and leading to G.S.'s premature birth. The circuit court adjudicated G.S. a neglected minor. 705 ILCS 405/2-3(1)(b) (West 2010).

¶ 6 On December 7, 2011, attorney Stephen Green entered his appearance for Jessica and Albert. Three months later, on March 1, 2012, the State filed a second amended petition for adjudication of wardship and motion for expedited termination of parental rights and appointment of guardian with power to consent to adoption. On the same date, the State also filed a motion to disqualify attorney Green from representing both Jessica

and Albert in the case. The State argued that attorney Green could not provide proper counsel to both parties because "[i]t [wa]s conceivable that a custody determination may need to be rendered as to one parent rather than the other."

¶ 7 At the hearing held the same day, the State explained that it sought to amend its previous petition to allege that Albert was unfit for his failure to protect G.S. from conditions within his environment injurious to G.S.'s welfare (750 ILCS 50/1(D)(g) (West 2010)). Attorney Green stated that if the State were allowed to amend its petition for termination of parental rights to include these allegations against Albert, "at that point in time *** there becomes a conflict and *** represent[ing] both of these individuals is going to be a problem. It cannot be done." The court allowed the State to amend the petition and thereby found a potential conflict of interest between Jessica and Albert. Attorney Green moved to withdraw as Jessica's attorney. The court allowed attorney Green to withdraw and addressed Jessica, noting "there could be a conflict of interest between" her and Albert. The court appointed attorney Celeste Hanlin to represent Jessica.

¶ 8 At the adjudicatory hearing on May 16, 2012, attorney Susan Burger represented Jessica, and attorney Green represented Albert. Jessica stipulated to paragraph five of the second amended petition for adjudication. Paragraph five stated that G.S. was neglected because he was a minor whose environment was injurious to his welfare because Jessica had been convicted of the first-degree murder of her infant child. Accordingly, the circuit court adjudged G.S. neglected and dependant, made him a ward of the court, and vested

guardianship in the guardianship administration of DCFS by orders of adjudication and disposition entered on May 17, 2012, and November 1, 2012.

¶ 9 On September 6, 2012, G.S.'s guardian *ad litem* filed a petition for an order of protection against Jessica, noting that Jessica had been convicted of an offense resulting in the death of a child. On September 27, 2012, the circuit court entered the order of protection.

¶ 10 On February 6, 2013, attorney Burger filed a motion to withdraw as Jessica's attorney. At the hearing on the same date, attorney Green also referenced a motion to withdraw, stating that Albert no longer wanted to retain him as his attorney, and attorney Green requested that he be granted leave to withdraw as Albert's attorney. The circuit court granted both motions to withdraw. Both Jessica and Albert indicated that they intended to hire private attorneys. At the end of the hearing, the circuit court noted that there was a potential conflict of interest between Albert and Jessica so that each would require separate counsel.

¶ 11 On March 14, 2013, at a permanency hearing, attorney Tom Moyer represented Albert, and attorney Megan Nolan entered her appearance on Jessica's behalf. At the hearing, the circuit court noted that in a psychological report filed by Dr. Kosmicki, Dr. Kosmicki opined that no child was safe in Jessica's care.

¶ 12 On August 7, 2013, the circuit court allowed attorney Nolan to withdraw as Jessica's attorney. On September 11, 2013, the circuit court appointed attorney Peggy Reiman to represent Jessica.

¶ 13 On October 16, 2013, at a permanency hearing, attorney Moyer represented Albert, and attorney Reiman represented Jessica. Albert argued that he no longer lived with Jessica, had participated in the recommended psychological examination, and had attended domestic violence counseling. The circuit court found appropriate the goal of substitute care pending termination of parental rights.

¶ 14 On December 18, 2013, the State filed a supplemental petition for termination of parental rights and for appointment of a guardian with power to consent to adoption. In the petition, the State alleged Jessica was unfit on the basis of her inability to discharge parental responsibilities (750 ILCS 50/1(D)(p) (West 2010)); depravity (750 ILCS 50/1(D)(i)(2) (West 2010)); failure to make reasonable efforts to correct the conditions that were the basis for the removal of G.S. (750 ILCS 50/1(D)(m)(i) (West 2010)); and failure to make reasonable progress toward the return of the child to the parent within nine months after an adjudication of neglected or abused minor (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 15 In the petition, the State alleged that Albert was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to G.S.'s welfare (750 ILCS 50/1(D)(b) (West 2010)); failing to make reasonable efforts to correct the conditions that were the basis for the removal of G.S. (750 ILCS 50/1(D)(m)(i) (West 2010)); failing to make reasonable progress toward the return of G.S. within nine months after an adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)); and failing to protect G.S. from conditions within his environment which were injurious to G.S.'s welfare (750 ILCS 50/1(D)(g) (West 2010)).

¶ 16 On February 21, 2014, at the hearing on the petition to terminate parental rights, attorney Moyer was present on Albert's behalf, and attorney Reiman was present on Jessica's behalf. The circuit court took judicial notice of the certified copy of Jessica's conviction for first-degree murder of a child in Marion County case number 1996-CF-88.

¶ 17 Shalynn Malone, a child welfare specialist working in foster care placement for Christian Social Services, testified that she was assigned as G.S.'s caseworker in November 2011, first meeting with Albert and Jessica in their home, and thereafter meeting with them once a month. Malone testified that G.S. was removed from his parents' custody due to the risk of harm based on Jessica's history, including her previous conviction for murder.

¶ 18 Malone testified that an integrated assessment for Albert was scheduled for December 13, 2011. Malone testified that the purpose of the integrated assessment was to develop a service plan to correct the conditions which led to DCFS involvement. Malone testified that Albert did not cooperate with the completion of the integrated assessment. Malone testified that she repeatedly discussed with Albert that he needed to complete the integrated assessment because it outlined what, if any, services were necessary. Malone testified that Albert had stated he was declining on the advice of attorney Green. Malone testified that Albert also had stated that the integrated assessment was unnecessary because he was not at fault in the case at that time. Malone testified that when she left the case on August 30, 2012, Albert had not completed the integrated assessment, and therefore, she could not proceed with scheduling any services for him.

¶ 19 Malone testified that she also had requested Albert's social security number so that his background information could be obtained, but Albert refused to provide the information. Malone testified, however, that Albert was cooperative in participating in the paternity determination, and he was cooperative regarding some of the visitation. Malone testified that she supervised visitation between Albert and G.S. at least once a month. Malone testified that Albert was attentive to G.S. and responsive to his needs.

¶ 20 Malone testified that Jessica had participated in the integrated assessment but had failed to sign releases for information so that Malone was unable to refer Jessica for services. Malone testified that she supervised visitations between Jessica and G.S. and observed that G.S. was upset and hard to soothe and that Jessica was agitated or unable to address G.S.'s needs.

¶ 21 Malone testified that she had explained to both Albert and Jessica that if they were in a relationship, their services and their progress in the services, or lack thereof, would affect each other's ability to have G.S. returned home. Malone testified that she had explained to Albert that if Jessica did not make progress and he remained with her, he would not regain custody of G.S. because he was choosing to remain with someone who was not progressing in services. Malone testified that Albert and Jessica remained together while she was assigned to the case. Malone testified that Albert's living with Jessica was one of the conditions he needed to correct for G.S. to return to him. Malone testified that because Albert had failed to complete the integrated assessment, it was uncertain what further corrections were necessary.

¶ 22 Andrea Aird testified that she became involved with the case in September 2012. Aird testified that when she took over the case, the agency had recommended that Albert complete an integrated assessment. Aird testified that Albert finished the integrated assessment approximately one year after the case opened. Aird testified that Albert completed his domestic violence assessment in the summer of 2013. Aird testified that pursuant to reports she filed in July of 2013 and October of 2013, Albert had not completed the recommended mental health counseling, parenting classes, or domestic violence services. Aird testified that while she was on the case, Albert completed about 15% of the tasks that the agency had required, which was not in compliance with DCFS regulations.

¶ 23 Aird testified that she had supervised visits between Albert and G.S., and their interaction "was somewhat awkward." Aird testified that G.S. wandered around the playroom with little directed play. Aird acknowledged the Albert showed up regularly for visits with G.S.

¶ 24 Aird testified that the police had been called to Jessica and Albert's residence regarding some sort of domestic violence situation. Aird also testified that Albert had been required to stay in and maintain a stable home but that he moved several times during the length of the case.

¶ 25 Neila Johnson, from Christian Social Services, testified that she first made contact with Albert at the end of September 2013, and thereafter, in November 2013, became the caseworker, taking over for Aird, who had generated the service plan for Albert. In rating Albert on the service plan in November 2013, Johnson noted that Albert had made

some progress. Albert had signed consent forms for the domestic violence and parenting issues and had participated in the domestic violence assessment and attended domestic violence classes. Johnson testified that Albert began participating in mental health services in December 2013. Johnson testified that she rated Albert unsatisfactory in the parenting assessment because he had failed to provide any information. Johnson also rated Albert unsatisfactory regarding maintaining a home of his own. Johnson testified that Albert had maintained a home with Jessica until September 2013. Johnson remained Albert's caseworker until December 2013. Johnson had no contact with Jessica.

¶ 26 Jessica testified that she was 38 years old. Jessica testified that she was not allowed to bring G.S. home from the hospital with her. Jessica testified that she did not participate in any services through DCFS. Jessica asserted that DCFS "refused to help" her because of her previous first-degree murder charge.

¶ 27 Jessica testified that she and Albert had initially visited weekly with G.S. after he was removed from her care. Jessica testified that she participated in mental health counseling through Southern Illinois Regional Social Services. Jessica testified that she did not provide releases so that DCFS caseworkers could obtain her records. Jessica asserted that her failure to provide the releases was on the advice of attorney Green.

¶ 28 Jessica testified that she and Albert remained together as a couple for three years, until she moved from the home in the fall of 2013. Jessica testified that she attempted to contact Malone and Aird but had difficulty reaching them. Jessica testified that she had no contact with Johnson.

¶ 29 Albert testified that he was present at the hospital when G.S. was born and had prepared a bedroom for him. With regard to the integrated assessment, Albert testified that when he planned to initially complete the integrated assessment, Malone told Albert that Johnson would perform it. Albert testified that his attorney, attorney Green, asked Johnson if she was licensed to do so. Albert testified that he had completed a third of the assessment at that time. Albert testified that when Johnson answered in the negative, attorney Green told Albert not to complete it, and Albert and attorney Green left. Albert acknowledged that the assessment was reset for May but testified that it was cancelled. Albert testified that two or three weeks later, someone called to schedule another in September, which was also cancelled.

¶ 30 Albert testified that he had trouble contacting Malone and Aird. Albert testified that he nevertheless signed releases and provided his social security number to Malone. Albert testified that he completed the qualitative assessment in November 2013, when Johnson was the caseworker. Albert testified that he had had four caseworkers since Johnson.

¶ 31 Albert testified that his visits with G.S. were beneficial and that G.S. recognized him as his father. Albert testified that he had attended parenting classes and domestic violence classes the previous nine months at the Women's Center. Albert testified that Donna Allison was the parenting class counselor and that he had documentation confirming that he attended parenting classes at the Women's Center. Albert identified a January 3, 2014, letter, signed by Donna Allison, indicating that Albert had participated in four, one-hour parenting classes, in addition to domestic violence counseling.

¶ 32 Albert testified that he had made reasonable efforts to correct the conditions that were injurious to G.S. Albert testified that he called and visited the office trying to contact counselors, he attended classes, including mental health counseling, and he visited with G.S. Albert testified that he and Jessica separated permanently in September 2013, when she moved from their home. Albert testified that he had recently filed for an order of protection against Jessica.

¶ 33 After hearing evidence, the circuit court found clear and convincing evidence that Jessica was depraved as defined by the Adoption Act in that she had been convicted of first-degree murder of a child (750 ILCS 50/1(D)(i)(2) (West 2010)). The circuit court further found that Albert had been aware that living with Jessica would affect the return of the child and his parental rights. The circuit court found that Albert had nevertheless continued to live with Jessica from November 23, 2011, until September 2013, almost two years after G.S. was removed from Albert and Jessica's care. The circuit court found that Albert had failed to take action to protect G.S. from conditions within his environment, in that he had continued to live with Jessica during the relevant nine-month period, from May 18, 2012, until February 16, 2013.

¶ 34 Accordingly, in an order filed on February 28, 2014, the circuit court found Albert unfit for failing to make reasonable efforts to correct the conditions that were the basis for the removal of the child (750 ILCS 50/1(D)(m)(i) (West 2010)) and failing to make reasonable progress toward the return of G.S. within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)). In the order, the circuit court also found

Jessica unfit, finding her depraved in that she was convicted of first-degree murder of a child (750 ILCS 50/1(D)(i)(2) (West 2010)).

¶ 35 On June 19, 2014, at the best-interest hearing, attorney Moyer was present with Albert, and attorney Reiman was present for Jessica. The State called no witnesses. The guardian *ad litem* called Dustin Womack, a caseworker with Caritas Family Solutions. Womack testified that he had been G.S.'s assigned caseworker since January 2014. Womack testified that Albert had visited G.S. monthly but had missed approximately eight visits since 2010. Womack testified that the visits between Albert and G.S., which occurred at the visiting room at Caritas, typically were positive. Womack testified that Albert and G.S. had a good relationship but that the relationship was more similar to that of friends.

¶ 36 Womack testified that his records indicated that Albert had been homeless for 25 years and had served an eight-year term in a medium security prison. Womack testified that Albert received social security income of $750 per month. Womack testified that Albert and Jessica separated in September 2013, and that Albert lived alone.

¶ 37 Womack testified that Albert completed the integrated assessment in 2012 and created a psychological evaluation in February 2013. Womack testified that since late 2012, Albert had participated in mental health counseling and domestic violence counseling but the Women's Center had not submitted a written record to determine the amount of counseling he had completed.

¶ 38 Womack testified that Dr. Kosmicki completed an evaluation in 2012, wherein he opined that Jessica was at risk for suicidal ideation, antagonism, instability, and poor

impulse control. Dr. Kosmicki stated explicitly that any child left in Jessica's care would be unsafe due to her repeated behaviors of child endangerment. Womack testified that G.S. did not have a close bond to Jessica. Womack testified that Jessica's last visit would have been in July 2012.

¶ 39 Womack testified that G.S. had lived with substitute caregivers named Mr. and Mrs. Blue since December 4, 2012. Womack testified that G.S. demonstrated love and affection towards the foster family. Womack testified that there was a degree of respect and behavior between them that seemed more like a parent-child relationship. Womack testified that G.S. had a strong bond with the Blues. Womack testified that the Blues strongly desired to adopt G.S. Womack testified that G.S.'s foster home included two foster siblings, with whom G.S. had also bonded.

¶ 40 Danny Stone, a previous deputy sheriff at the Jackson County sheriff's department, testified that he had known Albert for two years. Stone testified that Albert's two-bedroom home was well-kept and clean. Stone testified that Albert acted as the neighborhood babysitter. Stone testified that Albert was active in the church, attending services, organizing parties, and volunteering at the soup kitchen and food pantry.

¶ 41 Albert testified that he had previously served eight years in prison for burglary. Albert testified that he was presently disabled, attending college, and selling craftwork. Albert testified that he raised three children, now adults, who had lived with him full-time. Albert testified that he had experienced no DCFS involvement prior to this case. Albert testified that he met Jessica in 2009, and they separated in September 2013. Albert testified that he did not refuse the integrated assessment. Albert testified that he

also did not refuse to provide his social security number and instead provided it the day he "walked out of the courtroom."

¶ 42 Lisa Blue, G.S.'s foster mother, testified that G.S. had lived in her home for a year and a half. Lisa testified that she was a nurse but did not work outside the home. Blue testified that G.S. referred to her as "mom" and her husband as "dad." Lisa testified that G.S. had a good relationship with his foster siblings and their extended family. Lisa testified that she and her husband wished to adopt G.S.

¶ 43 After hearing evidence at the best-interest hearing, the circuit court found it was in G.S.'s best interest that the parents' rights be terminated. Accordingly, in its order filed on June 20, 2014, the circuit court terminated Jessica and Albert's parental rights. Jessica and Albert thereafter filed timely notices of appeal.

¶ 44 ANALYSIS

¶ 45 Jessica and Albert argue that attorney Green was ineffective due to a *per se* conflict of interest. They contend that the court erred in allowing one attorney to represent both parents simultaneously because their interests in the matter with respect to G.S. and to each other were different.

¶ 46 Section 1-5 of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-5 (West 2010)) provides that minors and their parents have the right to be represented by counsel in a juvenile proceeding. If a party requests counsel and is unable to afford the fees, the trial court must appoint the public defender or other counsel as the case may require. 705 ILCS 405/1-5(1) (West 2010).

¶ 47 "Implicit within the right to counsel is that such representation be effective." *In re Johnson*, 102 Ill. App. 3d 1005, 1011 (1981). A parent's right to the effective assistance of counsel entitles her to the "undivided loyalty" of her attorney. *Id.* "To protect this right, counsel may not represent conflicting interests or undertake the discharge of inconsistent duties." *In re S.G.*, 347 Ill. App. 3d 476, 479 (2004). "This concept is so central to our profession that it is embodied in our Rules of Professional Conduct. 134 Ill. 2d R. 1.9(a)." *Id.*

¶ 48 "Although there is no constitutional right to counsel in cases brought under the Act [citation], Illinois courts apply the standard utilized in criminal cases to gauge the effectiveness of counsel in juvenile proceedings." *Id.* Our resolution of an ineffective-assistance-of-counsel claim is thus guided by the standards set out in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by the Illinois Supreme Court in *People v. Albanese*, 104 Ill. 2d 504 (1984). *Id.* Generally, to establish ineffective assistance of counsel, one must show both that counsel's representation fell below an objective standard of reasonableness and that a reasonable probability exists that, but for the error, the result would have been different. *People v. Peeples*, 205 Ill. 2d 480, 511-13 (2002).

¶ 49 "Illinois courts apply a different standard to determine whether certain conflicts of interest result in the ineffective assistance of counsel." *In re S.G.*, 347 Ill. App. 3d at 479. "The supreme court has recognized that in cases where a conflict is created by defense counsel's prior or contemporaneous association with either the prosecution or the victim, the effect of counsel's conflict may be so subtle or imperceptible that the record on appeal may not reveal the extent of the influence." *Id.* "In such a case, the complainant will not

be able to demonstrate that counsel acted unreasonably or that the outcome of the case would have been different absent the conflict." *Id.* "This led the supreme court to develop what has been coined the '*per se* conflict of interest' rule. *People v. Spreitzer*, 123 Ill. 2d 1, 13-23 (1988) (the supreme court explains and clarifies the different classes of conflicts, the *per se* rule, and related terminology)." *Id.*

¶ 50 "Illinois courts apply the same *per se* conflict analysis in cases under the Act as in criminal proceedings." *In re A.F.*, 2012 IL App (2d) 111079, ¶ 21; see also *In re N.L.*, 2014 IL App (3d) 140172, ¶ 47 ("It is clear that 'the statutory right to counsel in juvenile proceedings is violated when one attorney is appointed to represent parties with conflicting interests.' " (quoting *Johnson*, 102 Ill. App. 3d at 1011-12). "When seeking reversal pursuant to a *per se* conflict, a party 'need not show that [his or her] counsel's performance was affected by the existence of the conflict.' " *In re A.F.*, 2012 IL App (2d) 111079, ¶ 21 (quoting *In re S.G.*, 347 Ill. App. 3d at 480).

¶ 51 "A *per se* conflict arises when a party's counsel has ties to a person or entity that would benefit from an unfavorable judgment for that party, because the attorney's knowledge that his or her other client's favorable result would conflict with that party's interest might subliminally affect counsel's performance in ways [that are] difficult to detect and demonstrate." (Internal quotation marks omitted.) *In re A.F.*, 2012 IL App (2d) 111079, ¶ 21 (quoting *In re Darius G.*, 406 Ill. App. 3d 727, 732 (2010), quoting *People v. Hernandez*, 231 Ill. 2d 134, 142-43 (2008)). "Our supreme court has identified three *per se* conflicts in the criminal context that require reversal: (1) defense counsel has a prior or contemporaneous association with the victim, the prosecution, or an entity

assisting the prosecution; (2) defense counsel contemporaneously represents a prosecution witness; or (3) defense counsel is a former prosecutor who had been personally involved in the defendant's prosecution." *In re A.F.*, 2012 IL App (2d) 111079, ¶ 21. "We review *de novo* the issue of whether counsel's representation constituted a *per se* conflict of interest, and our threshold inquiry is whether counsel represented or represents a party with conflicting interests to those of respondent." *In re N.L.*, 2014 IL App (3d) 140172, ¶ 46.

¶ 52 The justification for treating conflicts as *per se* has been "that the defense counsel in each case had a tie to a person or entity−either counsel's client, employer, or own previous commitments−which would benefit from an unfavorable verdict for the defendant." *Spreitzer*, 123 Ill. 2d at 16. In such a case, the defendant is not required to show prejudice as a result of the representation; the representation is deemed ineffective as a result of the inherent conflict. *Id.* at 14-16. In these situations, reversal is appropriate unless the record reflects that the defendant has been made aware of the conflict and has knowingly waived his right to conflict-free counsel. *Id.* at 17.

¶ 53 Although the right to effective assistance of counsel includes the right to undivided loyalty from one's attorney, joint representation is not a *per se* violation of the right to effective assistance of counsel. *In re N.L.*, 2014 IL App (3d) 140172, ¶ 47. "Treating multiple representation as creating a *per se* conflict would put an end to multiple representation altogether, since a 'possible conflict inheres in almost every instance of multiple representation,' and a *per se* rule would 'preclude multiple representation even in cases where "[a] common defense *** gives strength against a

common attack." ' " *Spreitzer*, 123 Ill. 2d at 17 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980), quoting *Glasser v. United States*, 315 U.S. 60, 92 (1942) (Frankfurter, J., dissenting)). In cases involving actual conflicts of interest that are not *per se* disabling, the conflict must be timely brought to the trial court's attention or on appeal, actual prejudice must be shown. *People v. Sanders*, 294 Ill. App. 3d 734, 736 (1998). To demonstrate that there was prejudice at trial, the respondent must demonstrate that special circumstances engendering an actual conflict adversely affected her right to a fair hearing. *Id.* at 737.

¶ 54 In *In re Darius G.*, the same attorney was appointed to the respondent-parent and then later to the minor in termination proceedings under the Act. *In re Darius G.*, 406 Ill. App. 3d at 738. Because the same attorney was representing adversarial positions, the court found a *per se* conflict of interest. *Id.* Case prejudice was therefore presumed, and the respondents did not need to demonstrate that the conflict contributed to the judgments entered against them. *Id.* at 739. "The court's underlying concerns with the same attorney representing adversarial parties in the same proceedings were the attorney's undivided loyalty in light of opinions already formed while representing the adverse party and the attorney's ability to use confidentially gleaned information against that party while representing the other party in later proceedings." *In re N.L.*, 2014 IL App (3d) 140172, ¶ 48.

¶ 55 "This ideology was reaffirmed by the court in *In re A.F.*, 2012 IL App (2d) 111079." *In re N.L.*, 2014 IL App (3d) 140172, ¶ 49. In *In re A.F.*, the court stated that in limiting the *per se* conflict rule in termination proceedings to situations where the same

attorney represents adverse parties in the same proceedings, the court strikes the appropriate balance between ensuring conflict-free representation and protecting the best interest of the minors with stability and finality in the proceedings. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 32.

¶ 56 In this case, attorney Green jointly represented both *parents* in the termination of parental rights proceedings, but he did not represent the opposing interests of child and parent. *Cf. In re Paul L.F.*, 408 Ill. App. 3d 862, 865 (2011) (unacceptable rotation of representation between mother, father, and child); *In re Darius G.*, 406 Ill. App. 3d at 739 (attorney represented mother and son); *In re S.G.*, 347 Ill. App. 3d at 478 (status as GAL for minors and subsequent representation of mother created *per se* conflict of interest that rendered counsel's assistance ineffective due to concern that opinions formulated about best interest of children when representing them impacted ability to later effectively represent mother with undivided loyalty). This case is therefore more similar to *In re N.L.*, wherein the court found that the respondent-parents were not adverse clients to support invoking a *per se* conflict of interest rule. *In re N.L.*, 2014 IL App (3d) 140172, ¶ 50. Instead, the court found no evidence in the record that the parents had conflicting interests as to the children at any time prior to the attorney's request to be removed. *Id.* The court in *In re N.L.* held that in such a case, the "[i]nterests of [the] parties must be shown to be adverse with respect to the proceedings." *Id.*

¶ 57 Here, the record reflects that attorney Green's joint representation of Jessica and Albert involved the same goal: to return G.S. to the home where they lived together, and both Jessica and Albert were fully aware that attorney Green represented them both.

Compare *In re Paul F.*, 408 Ill. App. 3d at 866 (nothing in record indicated that mother had any idea that 2 of her 10 attorneys had conflicting involvements in the case), with *In re D.B.*, 246 Ill. App. 3d 484, 491 (1993) (no conflict of interest where attorney informed client mother of prior representation of minor). Accordingly, from the time Jessica and Albert accepted joint representation until attorney Green requested removal as Jessica's counsel, their interests were not different or adversarial with respect to the custody of G.S. See *In re N.L.*, 2014 IL App (3d) 140172, ¶ 51. We find no *per se* conflict of interest existed because the interest of the parties contesting the representation was not adverse. See *People v. Mahaffey*, 165 Ill. 2d 445, 457 (1995) (court will not overturn a conviction based on hypothetical conflicts). They possessed a joint interest in reestablishing their family. See *In re N.L.*, 2014 IL App (3d) 140172, ¶ 52.

¶ 58 Notwithstanding our finding that attorney Green, when jointly representing Jessica and Albert, harbored under no *per se* conflict of interest, we recognize that once the State amended the petition for termination in March 2012, attorney Green, the State, and the circuit court suggested that Albert and Jessica's legal defenses would ultimately be inconsistent and in conflict.

¶ 59 In joint representation cases, "[i]f counsel brings a potential conflict to the attention of the trial court at an early stage, a duty devolves upon the trial court to either appoint separate counsel or to take adequate steps to ascertain whether the risk of conflict was too remote to warrant separate counsel." *Spreitzer*, 123 Ill. 2d at 18. "If adequate steps are not taken, the fact of a potential or possible conflict may deprive the defendant of the guaranteed assistance of counsel, because of the necessity of counsel's tailoring the

defense to accommodate the conflict." (Emphasis omitted.) *People v. Jones*, 121 Ill. 2d 21, 28 (1988). "[R]eversal for the trial court's failure to alleviate possible or potential conflicts does not require a showing of 'specific prejudice.' " *Spreitzer*, 123 Ill. 2d at 18 (quoting *Holloway v. Arkansas*, 435 U.S. 475, 487 (1978)).

¶ 60 We note initially that attorney Green was retained counsel. See *In re S.G.*, 347 Ill. App. 3d at 481 (court-appointed counsel demands closer scrutiny than retained counsel for conflicts of interest). Nevertheless, in March 2012, when the State and attorney Green referenced a potential conflict of interest before the court, the circuit court allowed separate counsel for Jessica. Accordingly, Jessica clearly suffered no ineffective assistance of counsel due to a conflict of interest.

¶ 61 Moreover, the potential conflict was resolved for both Jessica and Albert when attorney Green ceased representing Jessica. See *People v. Bradford*, 198 Ill. App. 3d 717, 721 (1990) (although attorney raised potential conflict issue, potential conflict was resolved, even though attorney continued to represent defendant, because attorney ceased representing codefendant upon realizing potential for conflict). In declining to request withdrawal as Albert's counsel, attorney Green implicitly asserted there was no continuing conflict to require such withdrawal. See *id.*

¶ 62 Further, notwithstanding the assertions at the hearing, both prior to and subsequent to the State's amendment, Albert and Jessica's defenses remained consistent and were not in conflict. Albert and Jessica both continued to seek to avoid termination of their parental rights, *i.e.*, to show that they were both fit so that G.S. could return to their home, which they continued to share at that time. Indeed, Albert and Jessica continued to

share a home, and seek G.S.'s return to that home, throughout attorney Green's involvement in the case. Additionally, in March 2013, before Albert and Jessica's goals diverged upon their separation in September 2013, Albert also acquired different counsel. Accordingly, because the circuit court properly allowed substitution of counsel for Jessica when the potential for conflict was raised in March 2012, and because the risk of conflict was too remote at that time to warrant substitution of counsel for Albert, we find no reversible error.

¶ 63 We further reject Albert's assertion that his counsel was ineffective under *Strickland v. Washington* for advising him to refuse the integrated assessment. Albert argues that because he failed to complete the assessment, on the advice of his counsel, he failed to make reasonable progress during the first nine months after adjudication and was found unfit (750 ILCS 50/1(D)(m)(ii) (West 2010)).

¶ 64 As explained below, Albert's choice to continue to live with Jessica, thereby failing to make reasonable efforts to correct the conditions that were the basis for the removal (750 ILCS 50/1(D)(m)(i) (West 2010)), sufficiently established that he was unfit without regard to his failing to complete the assessment or failing to make reasonable progress. Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be found unfit, any one of the grounds, if proven, is sufficient to enter a finding of unfitness. *In re C.E.*, 406 Ill. App. 3d 97, 107 (2010). Accordingly, because Albert failed to make reasonable efforts to correct the conditions that were the basis for G.S.'s removal (750 ILCS 50/1(D)(m)(i) (West 2010)), without regard to completion of the integrated assessment, he suffered no prejudice from attorney's Green's

alleged advice not to complete it. Thus, his ineffective assistance of counsel claim under *Strickland* also fails.

¶ 65 As referenced above, Albert argues that the circuit court erred in finding him unfit pursuant to the Act.

¶ 66 The Act (705 ILCS 405/1-1 *et seq.* (West 2010)), as amended, provides a two-stage, bifurcated process for the involuntary termination of parental rights. *In re C.W.*, 199 Ill. 2d 198, 210 (2002). Initially, the court holds an "unfitness hearing," during which the State must make a threshold showing of parental unfitness as defined in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2010); 705 ILCS 405/2-29(2) (West 2010); see also *In re C.W.*, 199 Ill. 2d at 210. Because the termination of parental rights constitutes a complete severance of the parent-child relationship, proof of parental unfitness must be clear and convincing. *In re C.N.*, 196 Ill. 2d 181, 208 (2001). Only after the court finds the parent to be unfit will the court then conduct a "best interest hearing" to determine whether it is in the best interest of the child to sever the parental rights. 705 ILCS 405/2-29(2) (West 2010); *In re C.W.*, 199 Ill. 2d at 210; *In re D.T.*, 212 Ill. 2d 347, 352-53 (2004).

¶ 67 Although section 1(D) of the Adoption Act sets forth numerous grounds under which a parent may be found unfit, any one of the grounds, if proven, is sufficient to enter a finding of unfitness. *In re C.E.*, 406 Ill. App. 3d at 107. Section 1(D)(m)(i) of the Adoption Act provides that a parent may be found unfit for his "[f]ailure *** to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent." 750 ILCS 50/1(D)(m)(i) (West 2010).

¶ 68 "[W]here, as here, the State charges lack of parental fitness under section 1(D)(m)[(i)], a parent's conduct must be assessed based solely on the efforts made by the parent within the nine-month period following the adjudication of neglect." *In re Haley D.*, 2011 IL 110886, ¶ 88. " 'Reasonable effort,' a subjective standard, is associated with the goal of correcting the conditions that caused the removal of the child and focuses on the amount of effort reasonable for the particular parent." *In re M.A.*, 325 Ill. App. 3d 387, 391 (2001). A trial court does not have to wait forever for a parent to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent. *In re C.C.*, 299 Ill. App. 3d 827, 830 (1998).

¶ 69 Because the circuit court is in the best position to assess the credibility of witnesses, a reviewing court may reverse a circuit court's finding of unfitness only where it is against the manifest weight of the evidence. *In re C.N.*, 196 Ill. 2d at 208. A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly evident. *Id.* Each case concerning parental unfitness is *sui generis* and requires a close analysis of its unique facts. *In re C.E.*, 406 Ill. App. 3d at 108.

¶ 70 In the present case, the circuit court found that Albert was unfit because he had failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child (750 ILCS 50/1(D)(m)(i) (West 2010)). Those conditions included living with Jessica, who had been convicted of the first-degree murder of her child and who the record revealed had untreated physical, mental, and psychiatric disabilities which created a substantial risk of injury to G.S. The circuit court adjudicated G.S. neglected

on May 17, 2012, so the relevant nine-month period to assess the respondent's efforts following adjudication ended on February 17, 2013. During this nine-month period, Albert continued to live with Jessica, despite his awareness that doing so might jeopardize his parental rights as to G.S. We cannot conclude that the circuit court's finding of unfitness was against the manifest weight of the evidence. We thereby affirm the circuit court's finding of unfitness based on Albert's failure to make reasonable efforts to correct the conditions that were the basis for G.S.'s removal (750 ILCS 50/1(D)(m)(i) (West 2010)).

¶ 71 We note that Jessica does not argue on appeal that the circuit court's order finding her unfit was against the manifest weight of the evidence. Accordingly, she concedes that she failed to overcome the presumption that she was depraved pursuant to her first-degree murder conviction of a child. 750 ILCS ILCS 50/1(D)(i) (West 2010). We therefore affirm the circuit court's finding of unfitness as to both Albert and Jessica.

¶ 72 Jessica and Albert both argue that the circuit court erred in finding that it was in G.S.'s best interest that their parental rights be terminated.

¶ 73 The goals of a proceeding to terminate parental rights are: (1) to determine whether the natural parent is unfit, and if so (2) to determine whether adoption will best serve the child's needs. *In re M.M.*, 156 Ill. 2d 53, 61 (1993). Once parental unfitness has been established, the parent's rights must yield to the child's best interest. See 705 ILCS 405/2-29(2) (West 2010); *In re M.F.*, 326 Ill. App. 3d 1110, 1115 (2002). The court focuses upon the child's welfare and whether termination would improve the child's future financial, social, and emotional atmosphere. *In re Adoption of Syck*, 138 Ill. 2d

255, 276 (1990). A separate hearing and determination of the child's best interest is mandatory to ensure that the court properly focuses on those interests. *In re D.R.*, 307 Ill. App. 3d 478, 484 (1999). To determine the child's best interest, the circuit court is required to consider, in the context of the child's age and development needs, the following:

"(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2010).

¶ 74 "Because the best[-]interest determination focuses on what is in the *child's* best interest, the child's likelihood of adoption is an appropriate factor for the trial court's consideration." (Emphasis in original.) *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002). "Evidence of a bond or lack thereof between parent and child is relevant to the trial court's best-interest determination." *In re M.R.*, 393 Ill. App. 3d 609, 615 (2009). Other important considerations include the nature and length of the child's relationship with the present caretakers and the effect that a change of placement would have upon the child's emotional and psychological well-being. *In re Austin W.*, 214 Ill. 2d 31, 50 (2005). "[T]he trial court need not articulate any specific rationale for its decision, and a reviewing court may affirm the trial court's decision without relying on any basis used by the trial court." *In re Tiffany M.*, 353 Ill. App. 3d 883, 893 (2004).

¶ 75 The State must prove, by a preponderance of the evidence, that termination of parental rights is in the child's best interest. *In re D.W.*, 214 Ill. 2d 289, 315 (2005). A circuit court's finding that termination is in the child's best interest will not be reversed

unless it is contrary to the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 495 (2002).

¶ 76 At the best-interest hearing, Womack testified that Dr. Kosmicki completed an evaluation in 2012, wherein he opined that Jessica was at risk for suicidal ideation, antagonism, instability, and poor impulse control. Dr. Kosmicki stated explicitly that any child left in Jessica's care would be unsafe due to her repeated behaviors of child endangerment. Womack testified that G.S. did not have a close bond to Jessica. Womack testified that Jessica's last visit would have been in July 2012. She was offered visits on August 23, 2012, and August 30, 2012, but she had failed to attend either. The August 2012 visits were offered and refused prior to the court's entry of the order of protection.

¶ 77 The evidence at the hearing further revealed that although Albert loved G.S., he had not shown the stability and progress sufficient for G.S. to be return to his home. Instead, G.S. had bonded with the Blue family, with whom he had resided since December 4, 2012. The Blue family hoped to adopt G.S., and G.S. considered the Blues his parents and the other two children in the Blue home as his brother and sister. The Blue family provided G.S. with his own room. Womack explained that it would disrupt G.S.'s emotional and psychological development to be removed from the Blue family at this stage. Accordingly, we conclude that the circuit court properly terminated Albert and Jessica's parental rights.

¶ 78 CONCLUSION

¶ 79 For the reasons stated, we affirm the judgment of the circuit court of Jackson County.

¶ 80 Affirmed.